

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
THE BASU GROUP INC.,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	16-cv-00461-PGG
v.	:	
	:	
SEVENTH AVENUE, INC.	:	<u>JURY DEMANDED</u>
	:	
Defendant.	:	
-----X		

DEFENDANT'S CUMULATIVE APPENDIX IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PAGES 1-127

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE BASU GROUP INC.,

Plaintiff,

v.

SEVENTH AVENUE, INC.,

Defendant.

Civil Action No. 16-cv-00461-PGG

**DECLARATION OF DAVID C. BREZINA IN SUPPORT OF DEFENDANT
SEVENTH AVENUE'S MOTION FOR SUMMARY JUDGMENT**

I, David C. Brezina, hereby declare the following is true and correct pursuant to 28 U.S.C. §1746:

1. I am an attorney with the firm Ladas & Parry, LLP, counsel for the defendant Seventh Avenue, Inc. ("Seventh Avenue"), a member of the Illinois bar and have been admitted *pro hac vice* in this action. I submit this declaration in support of Seventh Avenue's Motion for Summary Judgment.

2. Counterclaim Exhibit C, Dkt 60 - 3 pages 2 - 3 of 3, having Bates® numbers TBG0001623 -- TBG0001624 are copies of documents produced by The Basu Group, Inc. during discovery.

3. Exhibit A to this Declaration is a copy of the contents of an envelope received by me from the Copyright Office, Library of Congress.

4. The Bates® numbers SA001229 - SA001238 were applied by me electronically after scanning the original paper documents.

5. Except for the added number noted above, Exhibit A hereto is a true and correct copy of the cover sheet with seal (SA001229), the signed transmittal and receipt (SA001237), with the contents of the application (SA00123 - SA001232) and template showing the instructions and blanks to be filled in with the application (SA001233 - SA001236).

6. Exhibit B to this Declaration was prepared by me on a desktop computer by copying and pasting the images from the original documents identified above each image.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 31, 2017

By: /David C. Brezina/
David C. Brezina
DB4599 (*pro hac vice*)

Ladas & Parry, LLP
224 South Michigan Avenue, #1600
Chicago, IL 60604
312.427.1300
Fax 312.427.6663
dbrezina@ladas.net

Ralph H. Cathcart, Esq. (RHC 2350)
Ladas & Parry, LLP
1040 Avenue of the Americas
New York, NY 10018
Tel 212.708.1800
Fax 212.246.8959

Brezina Declaration Exhibit A

SA001229



COPY OF E-FILE
APPLICATION

NOTE: The attached Application Report and the attached Addendum are a true representation of the information submitted to the Copyright Office in association with the electronic application for registration of material identified as PEACOCK FEATHER # 1 service number SR 1-158379335. In the course of the Copyright Office's consideration of the application, the submitted information may have been amended in accordance with the wishes of the applicant. However any such amendments are not reflected in this Application Report. Any such amendments will be reflected via a comparison between the Application Report and the Registration Certificate. Amendments may also be reflected in the correspondence records associated with an application.

The attached Application Template is meant to reflect the fields that are available to be populated in the application process. The purpose of the Application Template is not to attempt to indicate the exact language used on the date upon which the application in question was submitted. Rather, the purpose is to portray, and in a general sense explain, the fields that may be populated in an online application.

SA001230

APPLICATION

Title

Peacock Feather # 1

Completion/Publication

Year of Completion: 2007

Publication Date: January 1, 2008

Nation of Publication: United States

Author

Author: The Basu Group Inc.

Author Created: 2-D artwork

Work made for hire: Yes

Domiciled in: United States

Author: Societe Maison De Cuir

Author Created: 2-D artwork

Work made for hire: Yes

Domiciled in: India

Author: Soumitra Roy

Author Created: 2-D artwork

Work made for hire: No

Domiciled in: India

Copyright claimant

Copyright Claimant: The Basu Group Inc.

2227 US Highway One, #162, North Brunswick, NJ, 08902, United States

Transfer Statement: By written agreement

Rights and Permissions

Organization Name: The Basu Group Inc.

Name: To whom it may concern

Address: 2227 US Highway One, #162, North Brunswick, NJ, 08902, United States

SA001231

Certification

Name: Michael R. Gilman

Date: February 6, 2009

Correspondent Name and Address

Name: Michael R. Gilman

Email: mgilman@kgplaw.com

Company: Kaplan Gilman & Pergament LLP

Address: 1480 Route 9 North, Suite 204, Woodbridge, NJ, 07095, United States

Telephone: (732) 636-4500

Fax: (732) 636 4550

Registration #: VA 1-652-678

Service Request #: 1-158379335

Mail Certificate

Kaplan Gilman & Pergament LLP

Michael R. Gilman

1480 Route 9 North

Suite 204

Woodbridge, NJ 07095 United States

SA001232

Addendum to Application Report

The following fields, while not traditionally viewed as part of an “application,” were populated by the applicant at the time of submission of the electronically filed application:

Certification:

APPLICANT'S INTERNAL TRACKING NUMBER (OPTIONAL) 847-002-Peacock Feather 1

APPLICATION TEMPLATE FOR COPYRIGHT REGISTRATION

SA001233

*** Designates Required Fields****1 WORK BEING REGISTERED**

- 1a. * Type of work being registered (*Fill in one only*)
- | | |
|---|--|
| <input type="checkbox"/> Literary work | <input type="checkbox"/> Performing arts work |
| <input type="checkbox"/> Visual arts work | <input type="checkbox"/> Motion picture/audiovisual work |
| <input type="checkbox"/> Sound recording | <input type="checkbox"/> Single serial issue |

1b. * Title of this work (*one title per space*)

1c. For a serial issue: Volume Number Issue ISSN

Frequency of publication: Other

1d. Previous or alternative title 1e. * Year of completion **Publication** (*If this work has not been published, skip to section 2*)1f. Date of publication (mm/dd/yyyy) 1g. ISBN 1h. Nation of publication ☐ United States ☐ Other 1i. Published as a contribution in a larger work entitled 1j. If line 1i above names a serial issue Volume Number Issue On pages 1k. If work was preregistered Number PRE- **2 AUTHOR INFORMATION**2a. Personal name * *complete either 2a or 2b*

First Name Middle Last

2b. Organization name 2c. Doing business as 2d. Year of birth 2e. Year of death

2f. * ☐ Citizenship ☐ United States ☐ Other

☐ Domicile ☐ United States ☐ Other

2g. Author's contribution: ☐ Made for hire ☐ Anonymous

☐ Pseudonymous (Pseudonym is:)

2h. * This author created *Fill in only the authorship that applies to this author)*

Depending upon the type of work being registered, Applicant may select various types of authorship. The options, which have changed over time and which differ depending on the type of work being registered, have included:

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> Editing/Editor | <input type="checkbox"/> Music | <input type="checkbox"/> Text of Liner Notes | <input type="checkbox"/> Map and/or Technical Drawing |
| <input type="checkbox"/> Entire Motion Picture | <input type="checkbox"/> Lyrics | <input type="checkbox"/> Text | <input type="checkbox"/> Musical Arrangement |
| <input type="checkbox"/> Direction/Director | <input type="checkbox"/> Performance | <input type="checkbox"/> 2-D Artwork | <input type="checkbox"/> Translation |
| <input type="checkbox"/> Production/Producer | <input type="checkbox"/> Production | <input type="checkbox"/> Photograph(s) | <input type="checkbox"/> Compilation |
| <input type="checkbox"/> Script/Screenplay | <input type="checkbox"/> Remix | <input type="checkbox"/> Sculpture/3-D Artwork | <input type="checkbox"/> Computer Program |
| <input type="checkbox"/> Cinematography/Cinematographer | <input type="checkbox"/> Photograph(s) | <input type="checkbox"/> Jewelry Design | <input type="checkbox"/> Other |
| <input type="checkbox"/> Sound Recording | <input type="checkbox"/> Artwork | <input type="checkbox"/> Architectural Work | |
| | <input type="checkbox"/> Compilation | | |

Other:

3 COPYRIGHT CLAIMANT INFORMATION

SA001234

Claimant *complete either 3a or 3b - If you do not know the address for a claimant, enter "not known" in the Street address and City fields.

3a. Personal name First Name Middle Last

3b. Organization name

3c. Doing business as

3d. Street address *

Street address (line 2)

City * State ZIP / Postal code Country

Email Phone number (Add "+" and country code for foreign numbers)

3e. If claimant is **not** an author, copyright ownership acquired by: ☐ Written agreement ☐ Will or inheritance ☐ Other

Other

4 LIMITATION OF COPYRIGHT CLAIM

Skip section 4 if this work is all new.

4a. Material excluded from this claim (*Material previously registered, previously published, or not owned by this claimant*) Depending upon the type of work being registered, Applicant may select various types of material. The options, which have changed over time and which differ depending on the type of work being registered, have included:

- Script/Screenplay
- Performance
- Sculpture/3D Artwork
- Translation
- Preexisting music
- Music
- Map and/or technical drawing
- Compilation
- Preexisting footage
- Lyrics
- Musical arrangement
- Other
- Preexisting photograph(s)
- Text
- Artwork
- Sound recording
- 2D Artwork
- Computer program
- Production
- Jewelry design
- Editing

4b. Previous registration(s) Number Year

4c. New material included in this claim (*The work contains new, additional, or revised material*) Depending upon the type of work being registered, Applicant may select various types of material. The options, which have changed over time and which differ depending on the type of work being registered, have included:

- Editing
- All other cinematographic material
- 2D Artwork
- Artwork
- New narration
- Sound recording
- Photograph(s)
- Translation
- Additional new footage
- Production
- Jewelry design
- Compilation
- Revisions/additions to script
- Performance
- Architectural work
- Computer program
- Production as a motion picture
- Music
- Sculpture/3D Artwork
- Other
- Lyrics
- Map and/or technical drawing
- Text
- Musical arrangement

Other:

5 RIGHTS AND PERMISSIONS CONTACT

First Name Middle Last

Name of organization

Street address

Street address (line 2)

City	State	ZIP / Postal code	Country
			SA001235

Email _____ Phone number _____
(Add "+" and country code for foreign numbers)

6 CORRESPONDENCE CONTACT

First name *	Middle	Last *

Name of organization _____

Street address *

Street address (line 2)

City *	State	ZIP / Postal code	Country

Email * _____ Daytime phone number _____
(Add "+" and country code for foreign numbers)

* Complete either 7a, 7b, or both

7 MAIL CERTIFICATE TO:

7a. First Name	Middle	Last

7b. Name of organization

7c. Street address *

Street address (line 2)

City *	State	ZIP / Postal code	Country

8 CERTIFICATION

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of this work, and that the information given in this application is correct to the best of my knowledge.

8a. Signature**8b. Printed name****8c. Date signed****8d. Deposit account number**

Account holder

9 Note to Copyright Office (Optional):

SA001236

10 Special Handling (Optional)

Complete this section only if you are applying for special handling of the case. The Application must be certified for Special Handling by the author/claimant of exclusive right(s), or by the authorized agent of any of the preceding.

Warning: The special handling fee for a single claim is \$760

Special Handling (The information requested below is required for Special Handling claims) ☐

Compelling Reason(s) (At least one must be selected)

Pending or prospective ☐

Customs matters ☐

Contract or publishing deadlines that necessitate the expedited issuance of a certificate ☐

I certify that I am the author, copyright claimant of exclusive rights, or the authorized agent of the author, copyright claimant of exclusive rights of this work. ☐

Explanation for Special Handling:

This is the place to give any comments/instructions regarding special handling specific to this claim.

SA001237

Date: February 8, 2017

LIBRARY
OF
CONGRESSLadas & Perry LLP
Attn: David Brezina
224 S Michigan Avenue
Suite 1600
Chicago, IL 60604

Type of remittance received:

check or money
order
deposit
account--description
number:
credit card
SR 1-4332716300COPYRIGHT
OFFICE

X

101 Independence
Avenue, S.E.

The Records Research and Certification Section has provided the following services and applied fees as shown below.

Application Retrieval \$100.00

Application Copy \$12.00

Washington, D.C.
20559-6000**Total fees charged \$112.00****Total remittance received \$112.00**Sincerely yours,
Tanisha Clark
RRC TechnicianEnclosure: 1
Application Copy (VA 1-652-678)

FIRST CLASS

SA001238

US OFFICIAL MAIL
PENALTY FOR PRIVATE USE \$300
ZIP 20540 \$ 001.40⁰
02 1W
0004887201 FEB 08 2017



1600

IMPORTANT
ATT: DATED DOCUMENT ENCLOSED



Def. Cumul. App'x 12

101 Independence Avenue SE
Washington, DC 20559-6306
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300
Return if not delivered within 5 days

Brezina Declaration Exhibit B

Basu's Work: Complaint Exh. A, Dkt 1, page 10 of 12; Counterclaim Exh. A, Dkt 60 - 1 page 4 of 4; Basu Dep. Exh. 2, page TBG000003



Original Document TBG0001287 (Rotated) ; Counterclaim Exh. B, Dkt 60 - 2 Page 3 of 10 Bottom Right (Rotated); Basu Dep. Exh. 4, page TBG0001287 Bottom Right (Rotated)



Counterclaim Exh. B, Dkt 60 - 2 Page 7 of 10; Basu Dep. Exh. 4, page TBG0001291



Accused Bag: Chokhany Dec. Exh. B, SA001229 - SA001238



CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of March, 2017, served a copy of the foregoing by mailing, postage/shipping prepaid, in an envelope addressed to:

Michael Robert Gilman
Kaplan Breyer Schwarz & Ottesen LLP
100 Matawan Rd., Ste. 120
Matawan, NJ 07747
Email: mgilman@kbsolaw.com

Dated: March 31, 2017

/David C. Brezina/

David C. Brezina
DB4599 (*pro hac vice*)

Attorney Docket No.: C15675543

SA001239

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE BASU GROUP INC.,

Plaintiff,

v.

SEVENTH AVENUE, INC.,

Defendant.

Civil Action No. 16-cv-00461-PGG

Hon. Paul G. Gardephe

DECLARATION OF ANURAG CHOKHANY

1. My name is Anurag Chokhany.
2. I am a resident of the Republic of India and am more than 18 years old.
3. I am Director at Shankar Produce Company Private Limited in India, sometimes later referred to as "Shankar".
4. Shankar produced and sold to Seventh Avenue, Inc. the Red Peacock Feather Baga picture of which is attached hereto as Exhibit A.
5. All our designs in hand painting as well as styles are developed for our buyers as per their demand and requirements.
6. All the designs we offer that include Peacock feather have developed by us for our buyers since 2008.
7. Our team of artists make graphic designs for bags as per requirement of our buyers.
8. In the year 2012, one of our Australian customers had asked for a Peacock design, which became the design on the Hand-Painted Leather Peacock Book Bag as Exhibit B

(SA000393) (later "Peacock Book Bag").

9. The artist who created the Peacock Book Bag is named Sujit Das (later "Artist" or "The Artist"). SA001240
10. Out of our team of artists with one artist namely Sujit Das, created the red peacock design in Shankar's factory on request of our Australian customer with red being one of the main colors on the Peacock Book Bags sometimes in the year 2012.
11. The Artist does not speak or write English. I have discussed the facts with him and I am accurately translating his description of his actions into English.
12. The Artist picked up an original feather and bought a fabric swatch from the market with peacock prints and developed the initial design for the Peacock Book Bag.
13. The design was sent to the Australian customer and then the Australian customer made some comments, and the Peacock Book Bag design was then developed accordingly.
14. The background abstract peacock portion of the Peacock Book Bag design was derived from fabric sold for dresses
15. The portion of the Peacock Book Bag design that most closely resembles a natural peacock feather was derived from a natural peacock feather.
16. The suggestion from the Australian customer to change the Peacock Book Bag design was to make the background and eye of the peacock feather including red as the dominant color.
17. The Peacock Book Bag design having the original peacock feather was used on the bag sold to Seventh Avenue with no suggested changes from Seventh Avenue to the Design, besides using the Peacock Book Bag design on a different item.
18. The Artist created the Peacock Book Bag and the Red Peacock Feather Bag

independently of Anushka items from an original peacock feather, a fabric swatch with peacock prints and comments from the Australian customer. SA001241

19. The design on the Peacock Book Bag as Exhibit B (SA000393) was used for the Red Peacock Feather Bag attached hereto as Exhibit A.
20. The Peacock design was hand painted on each Red Peacock Feather Bag.
21. We never copy anyone else's designs.
22. Seventh Avenue and its affiliates did not provide any creative input used in creating either Peacock design.
23. I worked with a buyer's agent of Seventh Avenue to provide the red peacock handbag to Seventh Avenue, and the name of the buyer's agent is Manju Mittal, who does business as Anusha Marketing.
24. Regarding providing handbags for Seventh Avenue, Manju Mittal confirmed that we had a team of creative artists and that we never copy anyone else's designs.
25. The peacock feather is from the national bird of India and hence nobody can make it registered.

I declare under penalty of perjury under the laws of the United States, as provided in 28 U.S.C. § 1746, that paragraphs 1 – 11, 13, 16, 17, 19 - 24 are made based on my personal knowledge, including my personal knowledge as Director of Shankar based on personal observations and after review of business records, and paragraphs 12, 14, 15 and 18 are accurate translations of statements made by Sujit Das, and the statements so described are true and accurate to the best of my knowledge, information, and belief and are consistent with how Shankar operates as a business.

Date: March 14, 2017


ANURAG CHOKHANY

Director

Shankar Produce Company Private Limited

SA001242

SA001243

Chokhany Declaration Exhibit A

SA001244



SA001245

Chokhany Declaration Exhibit B

SA001246



BHASKAR BASU

November 21, 2016

Page 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x
THE BASU GROUP INC.,
Plaintiff,
-against- Civil Action No.
SEVENTH AVENUE, INC., 16-cv-00461-PGG
Defendant. ECF CASE
-----x

DEPOSITION OF: BHASKAR BASU
Monday, November 21, 2016
New York, New York
9:49 a.m. - 2:16 p.m.

Reported in stenotype by:
Rich Germosen,
CCR, CRCR, CRR, RMR, NYACR, NYRCR
NCRA/NJ/NY/CA Certified Realtime Reporter
NCRA Realtime Systems Administrator
Job No. 188789

1 Deposition of BHASKAR BASU, taken in the
2 above-entitled matter before RICH GERMSEN, Certified
3 Court Reporter, (License No. 30XI00184700), Certified
4 Realtime Court Reporter-NJ, (License No. 30XR00016800),
5 NCRA/NY/CA Certified Realtime Reporter, NCRA Registered
6 Merit Reporter, New York Association Certified Reporter,
7 NCRA Realtime Systems Administrator, taken at the
8 offices of LADAS & PARRY, LLP, 1040 Avenue of the
9 Americas, New York, New York 10018-3738, on Monday,
10 November 21, 2016, commencing at 9:49 a.m.

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1 A P P E A R A N C E S:

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4 MYERS WOLIN

5 BY: MICHAEL R. GILMAN, ESQ.

6 100 Headquarters Plaza

7 North Tower, 6th Floor

8 Morristown, New Jersey 07960

9 (973) 401.7157 / (866) 864.3947 (FAX)

10 michael.gilman@myerswol.in.com

11 Attorneys for the Plaintiff

12

13 LADAS & PARRY, LLP

14 BY: DAVID C. BREZINA, ESQ.

15 224 South Michigan Avenue

16 Suite 1600

17 Chicago, Illinois 60604

18 (312) 427.1300 / (312) 427.6663 (FAX)

19 david.brezina@ladas.net

20 Attorneys for the Defendant

21

22

23

24

25

I N D E X

1		
2	WITNESS	EXAMINATION
3	BHASKAR BASU	
4	BY MR. BREZINA	10,143
5	BY MR. GILMAN	134
6		
7	AFTERNOON SESSION	78
8		
9		
10		

E X H I B I T S

11		
12	DESCRIPTION	PAGE
13	Exhibit 1, document entitled	14
14	Seventh Avenue, Inc.'s Rule	
15	30(b)(6) Deposition Notice to	
16	The Basu Group, Inc., not	
17	Bates stamped	
18		
19	Exhibit 2, document bearing	18
20	Bates stamps TBG 000001	
21	through 3	
22		
23	Exhibit 3, document bearing	22
24	Bates stamps SA 001210	
25	through 1218	

E X H I B I T S (CONT'D.)

DESCRIPTION	PAGE
Exhibit 3A, document bearing Bates stamps SA 001210 through 1218	23
Exhibit 4, document bearing Bates stamps TBG 0001287 through 1294	41
Exhibit 5, document bearing Bates stamp SA 001209	50
Exhibit 6, document bearing Bates stamp TBG 1623	51
Exhibit 7, document bearing Bates stamps TBG 000004 through 8	53
Exhibit 8, document bearing Bates stamps TBG 9 through 31	64

E X H I B I T S (CONT'D.)

DESCRIPTION	PAGE
Exhibit 9, document entitled Agreement and Assignment, bearing Bates stamps TBG 32 through 45	84
Exhibit 10, document bearing Bates stamp TBG 83	95
Exhibit 11, document bearing Bates stamps TBG 86 and 87	98
Exhibit 12, document bearing Bates stamps TBG 135 through 141	103
Exhibit 13, document bearing Bates stamps G 173 through 216	107
Exhibit 14, document entitled Anuschka License Agreement, bearing Bates stamps TBG 509 through 520	115

1 E X H I B I T S (CONT'D.)

2 DESCRIPTION PAGE

3 Exhibit 15, document bearing 117

4 Bates stamp SA 001219

5

6 Exhibit 16, multipage document 118

7 bearing Bates stamps TBG

8 0001116 through 0001159

9

10 Exhibit 17, document bearing 120

11 Bates stamp TBG 1791

12

13 Exhibit 18, document depicting 132

14 photographs

15

16 Exhibit 50, feather 137

17

18 Exhibit 51, feather 138

19 **original exhibits 1-18 returned with original
20 transcript by U.S. LEGAL SUPPORT to LADAS &
21 PARRY, LLP. Exhibits 50 and 51 were not
tendered to the reporter for inclusion.

22 (exhibit index concluded)

23

24

25

1 PRODUCTION OF DOCUMENTS AND/OR INFORMATION

2 Page Line

3 76 14

4

5 DIRECTION TO WITNESS NOT TO ANSWER

6 Page Line

7 (none)

8

9 QUESTIONS MARKED FOR LATER RULING

10 Page Line

11 (none)

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1 IT IS HEREBY STIPULATED AND AGREED, by
2 and between the attorneys for the respective parties
3 herein, that filing and sealing be and the same are
4 hereby waived.

5 IT IS FURTHER STIPULATED AND AGREED
6 that all objections, except as to the form of the
7 question, shall be preserved to the time of trial.

8 IT IS FURTHER STIPULATED AND AGREED
9 that the within deposition may be signed and sworn
10 to before any officer authorized to administer an
11 oath, with the same force and effect as if signed
12 and sworn to before the officer before whom the
13 within deposition was taken.

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1 -----

2 P R O C E E D I N G S

3 9:49 a.m.

4 New York, New York

5 -----

6 (Whereupon, the court reporter
7 administered the oath to the witness.)

8

9 B H A S K A R B A S U,

10 residing at 440 Timber Creek Drive, N.W., Issaquah,
11 Washington 98027, having been first duly sworn or
12 affirmed, was examined and testified as follows:

13 EXAMINATION BY MR. BREZINA:

14 Q. Good morning, Mr. Basu. My name is
15 David Brezina. I am the attorney for defendant
16 Seventh Avenue.

17 A. Okay.

18 Q. I want to just ask you some
19 background questions for the record.

20 You appear to speak English fluently;
21 is that correct?

22 A. Yes, I do.

23 Q. Are you under any medical condition
24 that limits your ability to answer the questions?

25 A. No.

1 Q. I'm going to ask you questions. The
2 court reporter is going to take down the answers.
3 We both will need to speak clearly and verbally. No
4 nodding or indications so that the recorder can get
5 down all the words.

6 A. I understand.

7 Q. Let me know if you don't hear the
8 questions. Let me know if you don't understand any
9 of the questions. Let us know if you need to take a
10 break, and if you remember something later on that
11 you think needs to be corrected, please consult with
12 your counsel so that we can make sure we have an
13 accurate record.

14 Would you -- I know you just gave it
15 to the reporter, but for the record, would you spell
16 your name.

17 A. Sure. It's B-h-a-s-k-a-r. Last name
18 is B-a-s-u, Basu.

19 Q. Your residence is?

20 A. 440 Timber Creek Drive, Northwest.
21 That's in Issaquah, Washington State 98027.

22 Q. And you are president of The Basu
23 Group?

24 A. That is correct.

25 Q. What's the address of The Basu Group?

1 A. The Basu Group is currently in 1003
2 Berkshire Drive in South Brunswick, New Jersey.
3 That's the registered address for that business
4 right now, and we are moving it to a different
5 address in the coming months.

6 Q. You're going to be in this
7 neighborhood or are you going to be in Washington
8 State?

9 A. I personally will be in Washington.
10 That's why I gave you my residence in Washington,
11 but I'll have a registered address here in New
12 Jersey.

13 Q. All right. How long have you been
14 president of The Basu Group?

15 A. Since 2005.

16 Q. And what was your employment before
17 then?

18 A. Until 2003, I was employed by Novell
19 Technology. That was out of Cambridge,
20 Massachusetts.

21 Q. That's the computer company?

22 A. Right.

23 Q. And before that?

24 A. Before that, it was the Cambridge
25 Technology Partners because they changed names to

1 Novel Technologies, and prior to that it was the
2 Telluride Group.

3 Q. Also a tech company?

4 A. Yes, I was always in tech out of
5 college.

6 Q. And where did you go to college?

7 A. Boston University.

8 Q. I need to ask for the record: Have
9 you ever been convicted of a crime?

10 A. No.

11 Q. Have you personally ever been a party
12 to litigation, not the company, just you?

13 A. No.

14 Q. Have you ever been a witness in any
15 legal matter?

16 A. No. Not that I recollect.

17 Q. So this is your first deposition?

18 A. Yes.

19 Q. I've marked these -- premarked the
20 exhibits with cover sheets. We can take them off,
21 but while we're shuffling them, we'll be able to
22 keep track.

23 MR. GILMAN: Okay.

24 MR. BREZINA: I ask the reporter to
25 mark as exhibit one a copy of the deposition notice.

1 (Whereupon, document entitled Seventh
2 Avenue, Inc.'s Rule 30(b)(6) Deposition Notice to
3 The Basu Group, Inc., not Bates stamped, is received
4 and marked as Basu Exhibit 1 for Identification.)

5 COURT REPORTER: Number one.

6 BY MR. BREZINA:

7 Q. Have you seen exhibit one or a copy
8 of exhibit one before?

9 A. Yes, I have.

10 Q. Have you read the subjects in that
11 exhibit?

12 A. Yes, I have.

13 Q. And you are speaking here today as a
14 representative of plaintiff, The Basu Group?

15 A. Yes, I am.

16 Q. All right. When I ask questions, as
17 a general rule I'm asking you in your capacity as a
18 representative of the company. If it comes up that
19 I want to know what your personal knowledge is, I'll
20 try to make that clear, but generally, you're here
21 to speak on these subjects on behalf of the company.

22 You gave us the current office of the
23 company, your company.

24 A. Right.

25 Q. Are there any other offices?

1 A. No, there aren't any other offices.

2 Q. What's the relationship of The Basu
3 Group to your parents' business?

4 A. My parents' business is a
5 manufacturing business out of India. So The Basu
6 Group is an importer from that factory out of India.

7 Q. What's the name of the factory in
8 India?

9 A. Societe Maison de Cuir.

10 Q. And that's French for company of the
11 house of leather?

12 A. Something along those lines, yes.

13 Q. All right. Does -- I'll just call
14 them Societe --

15 A. Sure.

16 Q. -- because that's the first word.

17 A. Sure.

18 Q. Does Societe sell to anyone other
19 than The Basu Group?

20 A. No. They're all selling their goods
21 to The Basu Group.

22 Q. All right. So any purchase by any
23 retailer --

24 A. Is through us.

25 Q. -- is through -- and The Basu Group?

1 A. Correct. None of our customers are
2 going directly to the factory.

3 Q. All right. How long has your
4 parents' business been operating?

5 A. Almost 30 years.

6 Q. And when did you first start working
7 for -- I'll withdraw the question.

8 When were you first involved in any
9 sales or import activities regarding your parents'
10 products?

11 A. So just to clarify the question,
12 you're asking this is prior to when I became the
13 president of this company if I was involved, is that
14 the question?

15 Q. Yes.

16 A. Okay. So in '95, which was the year
17 when I was a freshman in college, I interned with my
18 parents. So I went back to India from Boston
19 University and I interned that summer with my
20 parents, and they did send me to different countries
21 on a sales trip to gain experience.

22 Q. And after that, your relationship
23 with their company?

24 A. After that, my relationship with that
25 company was pretty much not there in any technical

1 sense because I was a student in college, and right
2 when I finished college, I got a job in the IT
3 sector, which I mentioned earlier. So it took me a
4 while to get back into, you know, the family
5 business.

6 Q. I seem to recall one of the documents
7 early on showing an address in Massachusetts in
8 2000?

9 A. Correct. Correct.

10 Q. Can you explain that?

11 A. Yes. So in 2000, my dad traveled to
12 the U.S. and actually I did get involved at that
13 time to register the business in the U.S. to, you
14 know, kind of get to know the market, introduce the
15 brand name, which we've created over the years, but
16 never -- we were never directly marketing for the
17 U.S. customer before that. So we did that
18 registration, and then initially my -- a friend of
19 mine was helping me run that operation because I
20 couldn't work in that business. I could legally own
21 it, but I couldn't do anything else, and after that
22 my first wife was involved in running the operation.

23 Q. And that was in around 2001 as I
24 recall?

25 A. 2001, '02 and '03, and after that,

1 once I was out of my job for a bit, I got laid off,
2 and then I was off for a bit, and then I decided, Do
3 you know what? This is what I will get into
4 full-time.

5 Q. Who are the owners of The Basu Group?

6 A. I am.

7 Q. You're the sole owner?

8 A. Absolutely, yeah.

9 MR. BREZINA: I'll ask the court
10 reporter to mark this as exhibit two. Copyright
11 registration VA 1-652-678.

12 (Whereupon, document bearing Bates
13 stamps TBG 000001 through 3, is received and marked
14 as Basu Exhibit 2 for Identification.)

15 COURT REPORTER: Number two.

16 BY MR. BREZINA:

17 Q. Can you identify exhibit two?

18 A. Yes, I can. It's a peacock feather
19 that we had designed.

20 Q. And you've looked at the last page,
21 that's the peacock feather?

22 A. Yeah, that's the last page.

23 Q. And what are the first two pages
24 after the cover sheet?

25 A. That's the registration certificate,

1 the copyright registration certificate.

2 Q. And listed on the certificate as the
3 second author, that's the Societe, your parents'
4 factory; correct?

5 A. Correct.

6 Q. Who is Soumitra, S-o-m-u-i-t-r-a,
7 Roy, R-o-y?

8 A. He is an artisan who has been working
9 with my -- with that factory and my mother for the
10 last almost 30 years.

11 He's an external contractor, but he
12 is hundred percent dedicated to working with us, but
13 he's always preferred being an independent
14 contractor versus an employee. That's why we've
15 always named him as a separate author.

16 Q. And we've used the term author and
17 artisan. Can you describe more generally what he
18 does?

19 A. Sure. And especially with respect to
20 this work that we are discussing, his role was
21 everything from the process of drawing the works on
22 paper, because based on the way we decided what
23 artworks we're going to create, we typically would
24 direct him to draw certain elements, use certain
25 colors, and he actually did that physical work of

1 applying that paint or applying that drawing on
2 paper or leather as the case may be. So he was
3 involved with every aspect of the drawing process
4 and the coloring process along with us.

5 Q. And when you said us, how does that
6 relate between the manufacturing by Societe and the
7 sales by your company?

8 A. So as a child, I've been exposed to
9 this business since I was ten years old, I've
10 watched the process. I've known the system behind
11 creating art, and I've been a witness to the
12 relationship that my mother has had with the artisan
13 who is creating the art with her, with her
14 assistance, and when I got involved -- as a child,
15 I've also always enjoyed art, so when I got
16 involved, that was one of the key areas where I got
17 involved, because as a part of selling the brand and
18 selling the product, I have to think about what
19 artworks I wanted to create and design for my market
20 and my audience.

21 So that's where my involvement came
22 in terms of how to create art, what artworks to
23 create, what colors, what color stories, what
24 pallets, trying to understand the taste of my
25 consumer and bringing it back to my design team,

1 which is in collaboration with Societe Masion de
2 Cuir, which is where my mother was designing and
3 then Soumitra, who was also one of the team members.
4 Together, the three of us designed all the works.
5 In other words, they weren't independently designing
6 anything. I was involved in every aspect of the
7 designs.

8 Q. We spoke generally about your
9 education. Could you just -- what was the
10 discipline in which you got your degree?

11 A. International management and MIS.
12 Bachelor's degree in international management and
13 MIS. It was a business degree.

14 Q. Okay. As an aside, I learned my
15 parents' business when I was ten too.

16 MR. GILMAN: As an aside, I wish my
17 parents had a business that I could have learned.

18 MR. BREZINA: Well, my father was a
19 patent and trademark and copyright lawyer.

20 MR. GILMAN: Oh, good for you.
21 That's nice.

22 MR. BREZINA: I have an exhibit three
23 which I've produced to you, Mike, and I have also --
24 this is the dictionary pages and I have also marked
25 up myself with red arrows pointing to the words I

1 Q. And I'm not sure if we established
2 this, but if you follow that quill up, there is a
3 generally egg-shaped figure at the end of the quill.
4 That's the eye; correct?

5 A. That is the eye of the feather, yes.

6 MR. GILMAN: Objection.

7 Q. Can you describe that for the record
8 what you see there of the eye?

9 MR. GILMAN: Objection.

10 I'd like you to point out what you
11 think is the eye since you're the one who is
12 defining it.

13 MR. BREZINA: Well, I think Mr. Basu
14 said he thinks there is an eye. Let me read the
15 testimony.

16 MR. GILMAN: That's fair. I recall
17 that.

18 MR. BREZINA: That is the eye;
19 correct? That is the eye of the feather? Yes.

20 BY MR. BREZINA:

21 Q. So that bit that you were referring
22 to, that's the eye of the feather?

23 A. Yeah, that is our interpretation of
24 what the eye of the feather looks like in our
25 drawing of a peacock feather.

1 Q. All right. And considering the shape
2 and the color and the black lines and the color, can
3 you just describe for the court reporter to take
4 down what you see there in terms of shapes and
5 colors and lines?

6 MR. GILMAN: As what is the eye?

7 MR. BREZINA: Yes.

8 A. So if I understand this correctly,
9 you're asking me to describe our interpretation of
10 the eye of a peacock feather as we have drawn in
11 this image?

12 Q. Yes.

13 A. Okay. So we have done -- we've
14 started with an outer circle or it's not exactly a
15 perfect circle. We've kind of -- it's almost like
16 an oval shape. Then we've done another line after
17 that on the inner side of that outer line. And then
18 we have done another round shape, which, again, it's
19 more like -- it's not a perfect circle. Again, it's
20 more like an oblong, but much shorter than the first
21 two, and then finally there is a fourth line which
22 is kind of cut in the center, which kind of goes
23 into that oblong like kind of cuts into the oblong
24 shape.

25 So anyway, so we've got those four

1 lines, and then in terms of colors, we've used
2 everything from purple to yellow to blue to green.
3 We've used metallic gold. We have used black.
4 We've used different colors, but again, for us, when
5 we were drawing it, the lines were the most
6 important part to kind of how we interpreted the
7 look of that eye, and the colors were more of a
8 secondary thing, because we can keep changing those
9 colors, we can -- because it is kind of using
10 artistic liberty, we can have fun with using
11 different colors to create different expressions of
12 the same element.

13 So the most important part of when we
14 were drawing it were those four lines so that we
15 could separate our coloring and create an effect
16 that has a good impact.

17 Q. All right. And I don't necessarily
18 want to define this and patent lawyers define things
19 oddly anyway, but the outer, generally, circular
20 line and the one just inside, to me it looks like
21 it's a little bit of a smaller diameter on the top
22 than the bottom, so it's kind of like what I would
23 say is an egg shape. Does that -- would you agree?
24 Could we call it egg-shaped?

25 MR. GILMAN: Objection.

1 A. You know --

2 MR. GILMAN: Objection. He's already
3 defined what he thought the shape was so.

4 MR. BREZINA: All right.

5 Q. The two inner shapes, also an oval --
6 the first one inner, it's kind of an oval, but the
7 long axis is horizontal; is that correct?

8 A. Yeah, it is.

9 Q. And at the top of that shape, there
10 are four projecting lines that touch the outer round
11 line of the eye shape; correct?

12 MR. GILMAN: Objection. Which --
13 again, can you point to the thing? Is that not
14 allowed for some reason? It would make life a lot
15 easier.

16 MR. BREZINA: I will point and
17 describe where I'm pointing.

18 MR. GILMAN: That's fine. It seems
19 to be clearer this way.

20 MR. BREZINA: All right.

21 BY MR. BREZINA:

22 Q. We have the, generally, circular
23 shape which we've been talking about as an eye. On
24 the top of that, there are four black lines
25 extending upwardly from there; correct?

1 A. There are, yes.

2 Q. Are those generally also barbs?

3 MR. GILMAN: Objection.

4 Q. You may answer.

5 A. So when we were drawing the peacock
6 feather, they were -- you know, I defined these
7 lines that were coming out of the quill as, you
8 called it, the stem.

9 Q. Yeah.

10 A. So we -- those branches were supposed
11 to go around this central figure, which we are
12 referring to as the eye of the peacock feather.

13 Q. Right.

14 A. So because there are these gaps,
15 there was a gap on the top, so we kind of -- as a
16 continuation of these branches, yes, we kind of
17 pulled those lines out there to kind of show it more
18 complete and tight.

19 Q. In the picture in exhibit two, there
20 is no red color, is there?

21 A. No. I mean, again, the picture that
22 you see, the color is -- like I said earlier as well
23 is something -- for us it's like, you know, we can
24 put different colors there to create a
25 representation, because this, these colors by

1 themselves are not a real feather, you know, as is.

2 So in our view, in the world of
3 drawing and coloring, you know, the drawing itself,
4 as in the black lines, the way we have defined this
5 peacock feather so that we can place colors along
6 it, along the sides of those black lines or within
7 the framework of those black lines is what allows us
8 to create our art. So -- no, I mean, specifically
9 this one has no red color, but we can use any color
10 we want to.

11 Q. The picture we've been talking about
12 in exhibit two, that's actually a photograph of a
13 piece of leather that had hand-painted art on it;
14 correct?

15 A. That is correct, yes.

16 Q. If you know, did you send the piece
17 of leather to the copyright office or did you just
18 send a photograph?

19 A. We just submitted the photograph.

20 Q. All right. Your bags are all hand
21 painted; correct?

22 A. Yes, they are.

23 Q. So there are no two alike?

24 A. There is always going to be little
25 differences because when you're hand painting a bag,

1 you're using brush and paint and you're applying
2 that paint in different ways, and just like your own
3 personal signature, no two bags can be exactly the
4 same. There will be subtle differences.

5 Q. All right.

6 MR. BREZINA: I'll ask the court
7 reporter --

8 MR. GILMAN: Want to take a quick
9 break?

10 MR. BREZINA: Yeah. Off the record.
11 (Whereupon, a recess is taken.)

12 MR. BREZINA: Let's go back on the
13 record.

14 BY MR. BREZINA:

15 Q. Mr. Basu, during the break you spoke
16 with Mr. Gilman; correct?

17 A. Yes.

18 Q. And you now have some things you
19 wanted to correct about the testimony?

20 A. Yes, I do. Yes, I do. So one of the
21 things I wanted to correct was you asked me the
22 question if the factory associate Maison de Cuir
23 supplies to anybody else. At the time of creation
24 of this art, we were the only -- The Basu Group in
25 the United States was the only company.

1 as defendant's exhibit four a document starting at
2 TBG 0001287. And I apologize, I had single printed
3 pages, but I printed them in black and white and I
4 see that the color copy that was just made for me is
5 two-sided copies, so I'll let the reporter mark as
6 he deems fit.

7 (Whereupon, document bearing Bates
8 stamps TBG 0001287 through 1294, is received and
9 marked as Basu Exhibit 4 for Identification.)

10 COURT REPORTER: Number four.

11 THE WITNESS: Thank you.

12 BY MR. BREZINA:

13 Q. Can you tell me what exhibit four is?

14 A. Exhibit four has different images of
15 peacock feathers and generally these are all images
16 of real peacock feathers, except for I think maybe
17 the shoe.

18 Q. Whose document was this?

19 A. A lot of these pictures are very
20 familiar to me because I think we've used this in
21 the past as inspiration for our work.

22 Q. And can you explain how use for
23 inspiration occurs?

24 A. So when I'm designing anything, and
25 since we are talking about the peacock feather, I'm

1 going to speak to the peacock feather, for me it is
2 about creating an interpretation that can be
3 reproduced on a leather handbag and replicated
4 several times by our artists and artisans so that
5 there is a consistency in the look and feel of that
6 element that we are taking inspiration from.

7 So with instance, the images that we
8 use for inspiration here were the peacock feathers.
9 We were looking for all the key elements of a
10 peacock feather to understand what would -- what
11 would make our drawing look as close or -- how could
12 I get it to closely resemble that look so that when
13 people look at it at a first glance, they will know
14 that, Oh, this is a peacock feather, while
15 understanding that I cannot possibly draw it or
16 color it or create it exactly the same way that the
17 real peacock feather is. So we took some of the
18 general lines that we could see from these various
19 images and placed them in our diagram here, which is
20 the exhibit --

21 MR. GILMAN: Two.

22 A. -- exhibit two and use that as our
23 guidelines to arrange, you know, different colors
24 around them to create various images of peacock
25 feathers.

1 Q. If we look at the first page of
2 pictures and I'll just use the last four digits,
3 1287 at the lower left.

4 A. Okay.

5 Q. Where do those pictures come from?

6 A. You know, some came from the
7 internet. There was a few that we found in a
8 magazine cutting. So, yeah, I mean, typically we
9 get all our images from publications, like magazines
10 or the internet, and, I mean, back then there was a
11 limited number of images online, but compared to
12 today, I mean, today there is a lot more I guess.

13 Q. If we look down in the first column,
14 third row.

15 A. Yes.

16 Q. That image has red color in the eye;
17 correct?

18 A. I see that, yeah. If you're pointing
19 to this one; right?

20 Q. Yeah, yeah.

21 A. Okay.

22 Q. First row, third column for the
23 record.

24 A. Yeah, that's reddish or orangish, you
25 know.

1 Q. Do you know was that the natural
2 color of a peacock feather or was the photo
3 retouched?

4 A. I wouldn't know.

5 Q. Okay.

6 A. I really wouldn't have an idea. We
7 did have a real peacock feather that was our primary
8 inspiration.

9 Q. All right.

10 A. In addition to all these photographs,
11 we did have a real peacock feather at the time of
12 creation.

13 Q. And if we go to the next page, the
14 second picture has the red. Is that just an
15 enlargement of the one we were talking about?

16 A. It seems like it, yes. Yeah, it
17 seems to me that it's just an enlarged version of
18 the first one that you pointed out.

19 Q. All right. If we skip ahead to the
20 picture of the necklace on a woman, the page has
21 1292 at the bottom.

22 A. Right. I see that.

23 Q. The source of that is in the words
24 indicated there?

25 A. Yeah, I actually don't recall the

1 specifics to be honest, but let's see, yeah, if we
2 got this photo, it would have been from the
3 internet, because we did not go to the Burning Man
4 Festival that's mentioned over here.

5 Q. Was this inspiration used to create
6 the art in exhibit two?

7 A. No, not entirely. So what we did
8 was, yeah, we got a lot of photographs and images
9 that we could find, but then we also had the real
10 feather, and typically when I'm creating an artwork,
11 what I do is I glance across all these images to try
12 and capture, you know, the image that forms in my
13 mind.

14 So, you know, as a child, whenever
15 I've drawn, and I did a lot of it when I was in
16 school and high school, etc., my approach to drawing
17 and my approach to art has always been from an angle
18 of interpretation or an angle of perception. So I
19 use these images mostly for -- less for technical
20 accuracy and more for kind of like an interpretation
21 value. What is the look and feel of that feather?
22 What's catching my attention?

23 And so once I've looked at all these
24 different feathers and then I've got the real
25 feather, which was the primary guidance for us,

1 that's when we started drawing and creating these
2 different guidelines to kind of create the feather,
3 and we didn't get to something like this at our
4 first attempt because we attempted various different
5 types of, you know, or methods of drawing the
6 feather and applying color to it to see what made it
7 look more realistic, and there was a lot of trial
8 and error before we actually ended up with this
9 version.

10 Q. When you say this --

11 A. This version, the one that we
12 copyrighted.

13 Q. Okay. In exhibit two?

14 A. In exhibit two, yes.

15 Q. You mentioned the shoe in exhibit
16 four. That's page 1293. That was not your
17 company's shoe in 2007?

18 A. No, no, no, not at all. This wasn't
19 created by us.

20 Q. Do you sell shoes now?

21 A. We have sold some shoes in the past
22 and that is one of the various products that we
23 continue to explore.

24 Q. But that's recent. It's not --

25 A. It's a recent past.

1 Q. Not leading to the creation of --

2 A. No, the shoes were not involved at
3 the time when this feather was created. This
4 feather was created specifically for bags and
5 wallets.

6 Q. Do you recall, did you have an actual
7 shoe in your studio?

8 A. No, we did not have an actual shoe,
9 and like I mentioned earlier, we had the photographs
10 and we had the real feather.

11 Q. And skipping to the next page, 1294,
12 those look to me to be earrings?

13 A. 1294, yes, those are earrings, yes.

14 Q. And do you recall did you have actual
15 earrings or is this a photograph?

16 A. No, this is a photograph of an
17 earring. We didn't have any actual earrings with
18 us, but having done, you know, trade shows, I had
19 attended trade shows prior to this creation where I
20 had noticed that there was a lot of earrings being
21 sold with feathers, and I had noticed that, you
22 know, that's something that women were gravitating
23 towards. So I figured that could be a fashion
24 element that could be added to our painted
25 collection, and that was one of the many triggers of

1 my inspiration.

2 Q. Those earrings you saw, those were
3 like cut pieces from actual peacock feathers?

4 A. I don't -- it appears -- it appeared
5 to be because -- but I didn't actually walk up to
6 them and touch them or feel them per se, but they
7 did appear to be realistic from a distance.

8 Q. All right. And you used all the
9 inspiration in exhibit four to inspire you to create
10 the art in exhibit two?

11 A. Yeah.

12 MR. GILMAN: Objection.

13 A. So, you know, it's hard for me to say
14 that I used all of them. So the way we design is
15 when we focus on a subject, we try to gather as much
16 information as in pictures that we can. We're
17 not -- from your earlier question, you were asking
18 me about the definition, etc. For us, we're
19 creating art. So the definition wasn't the
20 important thing. For us, it was kind of getting the
21 look and feel of what we want to draw.

22 So we get a lot of different pictures
23 and we kind of glance over them, and sometimes two
24 or three of them will catch more of our attention
25 than others. So it's -- you know, it's hard for me

1 to define after all these years, you know, that's --
2 you know, which of these photographs had a bigger
3 impact on me, but I do remember walking through
4 trade shows and noticing earrings being sold and
5 looking -- you know, looking at people wearing
6 something like that and thinking, you know, This is
7 something we should draw, we should paint, and then
8 going back and looking for more photographs, looking
9 for a real feather and then, you know, sitting with
10 the drawing board and trying to create that art.

11 Q. Was the art in exhibit four shared
12 with your mother or Soumitra Roy?

13 A. The art in -- I'm sorry, I'm not --

14 Q. We were talking about photos.

15 A. Oh, the photos?

16 Q. Yeah.

17 A. All the photographs in exhibit four.
18 Yeah, I mean, it was on the same table. We were all
19 working together. So, you know, when we're working
20 together, the photographs are -- you know, whatever
21 material we gather, we have it available to
22 everybody. So the three of us, when we were
23 working, it's lying on the table. I'm sure
24 everybody looked at it.

25 Q. Just physically you were in a same

1 room, in the same place?

2 A. Yes, I was.

3 Q. All right.

4 A. I was in Calcutta in India when we
5 were designing this feather.

6 Q. All right.

7 MR. BREZINA: I'll ask the court
8 reporter to mark -- off the record.

9 (Whereupon, a discussion is held off
10 the record.)

11 MR. BREZINA: Let's go back on the
12 record.

13 I'll ask the reporter to mark exhibit
14 five. This is also a two-sided copy.

15 MR. GILMAN: Thank you.

16 (Whereupon, document bearing Bates
17 stamp SA 001209, is received and marked as Basu
18 Exhibit 5 for Identification.)

19 COURT REPORTER: Number five.

20 THE WITNESS: Thank you.

21 BY MR. BREZINA:

22 Q. And it is my belief that this is also
23 a plaintiff exhibit 33.

24 MR. GILMAN: It's one of those, yeah.
25 I don't remember which.

1 Q. Looking at the picture in exhibit
2 five that has the number SA 001209 on the top, does
3 that look like a photo of an actual peacock feather?

4 A. Yes, it appears to be so.

5 Q. And is there anything that strikes
6 you as being inauthentic looking at that exhibit?

7 MR. GILMAN: Objection.

8 A. I'm not an expert, so I can't tell
9 you whether it's authentic or not authentic.

10 Q. All right. But nothing jumps out at
11 you to say it's fake?

12 A. You know, honestly as a layman --

13 Q. Yeah.

14 A. -- you know, I would say, yeah, it
15 looks realistic.

16 Q. All right.

17 A. But again, I'm not an expert to be
18 able to determine whether it was fake or not.

19 Q. All right.

20 MR. BREZINA: And we'll mark exhibit
21 six.

22 (Whereupon, document bearing Bates
23 stamp TBG 1623, is received and marked as Basu
24 Exhibit 6 for Identification.)

25 COURT REPORTER: Number six.

1 BY MR. BREZINA:

2 Q. Exhibit six down at the bottom has
3 the letters and numbers TBG 1623.

4 A. Yes.

5 Q. Is that a photo of the peacock
6 feather that you had in your possession?

7 A. Yes, this appears to be a photo of
8 that peacock feather.

9 Q. And you had that before you and
10 Mr. Roy and your mother created exhibit -- the art
11 in exhibit two?

12 A. We physically had the peacock feather
13 in front of us.

14 Q. If you know, is that feather shown in
15 exhibit four?

16 A. No, it can't be because this was the
17 real feather that we had, and what you're looking at
18 in exhibit four are images that were either
19 downloaded from the internet or cutouts from
20 magazines and newspapers.

21 Q. All right.

22 MR. BREZINA: I'm going to ask the
23 court reporter to mark as exhibit eight --

24 MR. GILMAN: What happened to seven?

25 MR. BREZINA: Oh, I'm sorry. Oh,

1 yes. Sorry. Thank you.

2 I ask the reporter to mark as exhibit
3 seven a document beginning with TBG 000004.

4 (Whereupon, document bearing Bates
5 stamps TBG 000004 through 8, is received and marked
6 as Basu Exhibit 7 for Identification.)

7 COURT REPORTER: Number seven.

8 BY MR. BREZINA:

9 Q. Can you tell me what exhibit seven
10 is?

11 A. Exhibit seven shows us the different
12 diagrams that we did of the peacock feather and how
13 we used it on different bags.

14 Q. What did you do when you used it to
15 create different bags?

16 A. So when we are designing any artwork,
17 when I'm sitting and thinking and planning what that
18 artwork is going to look like, a bag, a handbag is
19 not the same as a -- you know, a canvass literally.
20 A canvass is rectangular in shape typically and
21 you've got, you know, several inches on one side and
22 a few inches on the other side. It's a flat
23 surface. You can plan the artwork in a certain way.

24 When you're planning artwork on a
25 bag, you've got to think about a 360 degrees all

1 around the bag representation of your story, and
2 we're trying to create a story with our elements, of
3 course.

4 So for me to plan that art, what I do
5 is first I create an element that I want to work
6 with, and once I have my elements created, I place
7 that along the bag and I try different combinations,
8 different sizes to figure out what would look best.
9 The leather might wrinkle in certain parts. The bag
10 might fold in certain areas. The art might get
11 hidden, etc. So I've got to be careful of all of
12 those things when placing my artwork so that when
13 the bag is being carried by a customer in its true
14 form and the leather is in its natural form against
15 that bag, the artwork still stands out.

16 So what you're seeing in this -- in
17 these images is us placing that artwork in a certain
18 fashion so that the story comes across on the bag's
19 surface the way we intended it to be represented.

20 Q. Can you generally describe the
21 process of manufacturing -- once you've decided how
22 all those elements have been laid out, Societe has
23 45 or so artists, and the quality control at the end
24 when it's signed and approved, how does the process
25 work to get consistency in the finished product?

1 A. So during the creation process, it's
2 a closely guarded secret, whatever new artwork we're
3 creating. So it's a small team that is involved,
4 and at the time of this peacock feather, it was
5 Soumitra, my mother and myself. I was there in the
6 room creating this artwork with them, and once the
7 artwork was created and we were satisfied with what
8 we created, we created samples of bags that we
9 wanted to launch in the market, and once that bag
10 goes into production, we then share that sample, the
11 initial sample with our artisans and they go ahead
12 and recreate that art on those bags. They color the
13 bags just by looking at the samples.

14 So that process, you know, like
15 basically sometimes we are painting the bag before
16 it is constructed. Sometimes we're painting the bag
17 after it is constructed. The different aspects of
18 this artwork that -- you know, that takes place
19 before and after based on the construction because
20 the leather is getting folded or pleated, you can't
21 draw on that or do anything with that, or rather it
22 gets very complicated if you try to do it after it
23 is stitched and pleated.

24 So there is before and after stages
25 when we are applying the artworks and the colors and

1 the painting to the bag and they -- again, when
2 they're working, they always have that sample in
3 front of them, the original sample, and once all of
4 those things are done, we inspect it and then we
5 sign every bag.

6 Q. So just generally, do you have
7 artists who specialize in peacock bags and artists
8 who specialize in other bags?

9 A. With some artworks today I can say
10 that, yes, that kind of thing exists, but the
11 peacock feathers have been a part of our collection
12 for a very long time, so it's safe to say that all
13 of our artisans can color this in every different
14 colorways that we have created since because this is
15 not the only color that we paint the peacock feather
16 in.

17 Q. I just want to get a handle on the
18 process, and the art I do is not very creative.
19 It's things like patent drawings, and if I were to
20 be drawing something, it would be entirely intended
21 to be realistic.

22 How many product samples would you
23 have at any one time that are being used by one or
24 more artists to do a peacock themed bag? Is it just
25 one sample and a few artists or is it multiple?

1 A. Well, see these are all handmade
2 products we're talking about. So when somebody
3 is -- when we create these bags, we create them in
4 very, very small batches. So at any given point it
5 could be ten. It could be 15. It could be -- but
6 no more than 25 pieces being created at a time.

7 So each of the bags, the painting is
8 done from start to finish by the same person, so we
9 give them that sample. And we have done this
10 peacock feather on several different bags. So we do
11 have more than one sample, but it may not be of that
12 exact same bag.

13 Q. All right.

14 A. So they can get the colors of what we
15 want represented from other bags as well, if needed.

16 Q. And it might actually be a different
17 peacock feather, the stem is curved the other way or
18 it has a different number of bags?

19 A. Right. I mean, this is hand drawn.
20 You know, when we create these artworks, we
21 generally try to create a look and feel, and as you
22 can see from this diagram in exhibit seven, they
23 have different number of stems and/or branches --
24 sorry, different number of branches coming from the
25 sides, and they all -- each of these feathers that

1 we have drawn over here have subtle differences, but
2 generally they look the same.

3 Q. Referring back to the picture in
4 exhibit two, was this -- was the original from which
5 the photo was taken a sample on a flat piece of
6 leather that was photographed?

7 A. That is correct, because, you know,
8 when we created this artwork, we first tried it on
9 paper several times trying different methods of
10 doing it. We even tried a couple of different
11 leather swatches trying the different techniques of
12 drawing or of representation that we tried, but none
13 of those representations or interpretations appeared
14 to me the way I wanted it to look. So we kept
15 trying until we came to this specific like what
16 you're seeing in exhibit two.

17 So once we did the drawing in this
18 specific fashion where our application of a certain
19 color and then the highlighting that color with that
20 black line, the way it made the feather pop out is
21 where we zoned in on and said, Yes, that's the look
22 we want to move forward with, and that became our
23 initial guideline to how we wanted to do the
24 feather. From then on, we started recreating that
25 for the different bags that you have or rather the

1 with the use of colors, typically all of our bags
2 have more than one color. So it's very easy for the
3 customer to mix and match shoes, jewelry, prints, or
4 different colors of outfits and, therefore, it
5 becomes more versatile versus, you know, I'm wearing
6 a brown bag and, therefore, everything has to match
7 the brown.

8 Q. We were talking about exhibit eight
9 and I just want to ask you some general questions.
10 And I'm only going to ask about the existence of
11 documents, and I'm going to ask you and it may
12 relate to what Mr. Gilman might have had, so don't
13 tell me what he told you.

14 A. Sure.

15 Q. I only want to get to what you're
16 aware of.

17 A. Okay.

18 Q. Have you personally or on behalf of
19 The Basu Group signed any copyright applications
20 either electronically or with a handwritten
21 signature?

22 A. Yes, I have. I have done electronic
23 applications myself in the past.

24 Q. Did you fill those out yourself?

25 A. Yes, I did.

1 TBG 28, those are the black and whites of the two
2 deposits, but 29, 30 and 31 have nothing to do with
3 exhibit eight.

4 MR. BREZINA: Oh, thank you for
5 clarifying.

6 MR. GILMAN: These had to do with
7 other colorways that the peacock feather has
8 appeared in that Basu Group sold, I think, but these
9 had nothing to do with this, yeah. They just
10 happened to be produced in sequence.

11 MR. BREZINA: All right. Thank you
12 for that clarification.

13 BY MR. BREZINA:

14 Q. Going back to exhibit two, number
15 two, the first page of the copyright application,
16 peacock feather number one, registration number VA
17 1, hyphen, 652, hyphen, 678.

18 Looking at that document, top half,
19 and I'll indicate with my finger and describe, there
20 is a line to the right of the word title. Then
21 there is a line to the right of the words
22 completion, slash, publication. Do you see that
23 location?

24 A. Yes, I do.

25 Q. And the year of completion just under

1 that line is 2007; correct?

2 A. That is correct.

3 Q. All right. And to the best of your
4 knowledge, that's the year that was put in when you
5 submitted your copyright application; correct?

6 A. Yes, it was.

7 Q. All right. Under that is date of
8 first publication, January 1, 2008?

9 A. Correct.

10 Q. What was published January 1, 2008?

11 A. So what we did was we created our
12 catalogs and all the photo images of our bags,
13 samples, etc., and we e-mailed those catalogs or
14 shared those catalogs with our sales team in the
15 United States, across the United States by December
16 of 2007. So they had access to all our images and
17 all our information. We started sharing that with
18 customers at that point as well.

19 In January, we used to do a trade
20 show in Florida very early on in January. So we
21 were making sure that all our samples are
22 distributed in time. So by January 1, 2008, our
23 customers, who we typically wholesale to, started
24 gaining access to our images and our bags that we
25 intended to sell that season obviously through our

1 that easy?

2 A. There is a name for it which I cannot
3 recall at the moment.

4 Q. Okay.

5 A. There are several names that I do
6 recall, but none of them are the ones in Florida.

7 Q. Okay.

8 A. So it wouldn't -- I don't think I
9 would be able to help.

10 Q. While you mention it, which ones do
11 occur to you?

12 A. Magic which is the one in Vegas.
13 There is WSA which we used to do. It's a shoe show
14 in Vegas. We've done Industrial 212, Fame, I mean,
15 I can go on and on. There are ones in New York,
16 ones in Vegas, etc.

17 Q. All right. Let's go back to that
18 same page, down more towards the bottom there is a
19 line to the right, and to the left of it is the
20 words copyright claimant and then it lists your
21 company name and address and a transfer statement.

22 Under that line is another line to
23 the right with the words rights and permissions on
24 the left. In between those there is nothing, but
25 your name and address and the transfer statement;

1 correct?

2 A. And I'm going to point to it just to
3 make sure that I'm understanding it correctly.

4 Q. Yeah.

5 A. So this is where it says: Rights and
6 permissions?

7 Q. Right.

8 A. And between that line --

9 Q. And the line immediately above.

10 A. Oh, the immediately above?

11 Q. Yeah.

12 A. Where it says: Copyright claimant?

13 Q. Yeah.

14 A. So that's our company name and
15 address.

16 Q. Right.

17 A. That's our mailing address.

18 Q. And the transfer statement refers to
19 the way you got all rights?

20 A. Correct.

21 Q. And there is no section that says
22 limitation of copyright claim, correct, in between
23 those? Or anywhere?

24 A. Not that I can see any, no.

25 Q. All right. And there is no section

1 indicated material excluded from this claim, that's
2 not there; correct?

3 A. No.

4 Q. And there is no section that says new
5 material included in claim, that's not there either;
6 correct?

7 A. No.

8 Q. All right. There is nothing in
9 defendant's exhibit two that shows that you told the
10 copyright office about any of the images in exhibit
11 four. Is that a correct statement?

12 A. That is correct.

13 Q. All right. Do you recall if you
14 submitted any of the images in exhibit four to the
15 copyright office at any time?

16 A. No, I did not.

17 Q. Do you recall describing the images
18 in exhibit four in any sense --

19 A. No, I do not --

20 Q. -- in any copyright application?

21 A. No, I do not recall that.

22 Q. All right. So do you recall ever
23 telling the copyright office about your inspiration
24 for the peacock feathers?

25 A. No. What I do recall is submitting

1 the image that was -- that's presented right here in
2 exhibit two. That's what I sent to the copyright
3 office and that's it.

4 Q. By the way, was exhibit two, was that
5 one of the ones you filled out yourself or did you
6 have someone else do it?

7 A. I had the assistance of my counsel.

8 MR. BREZINA: I'll mark exhibit --
9 have the reporter mark exhibit nine. This is black
10 and white, but I think the originals are just an off
11 color. Should be fine.

12 (Whereupon, document entitled
13 Agreement and Assignment, bearing Bates stamps TBG
14 32 through 45, is received and marked as Basu
15 Exhibit 9 for Identification.)

16 COURT REPORTER: Number nine.

17 THE WITNESS: Thank you.

18 BY MR. BREZINA:

19 Q. You've seen the documents in exhibit
20 nine before; correct?

21 A. Yes, I have.

22 Q. By the way, I don't know if I said
23 for the record TBG 32 through 45.

24 And this includes three agreements
25 that were signed by you; correct?

1 A. So --

2 Q. 34, 37 and 40.

3 A. There is the first one, then there is
4 the second one. Yes. Yes, there are.

5 Q. And at the end, beginning at 42, is
6 schedule A and that's all of the works that were
7 involved in the three agreements; correct?

8 A. At that point in time, yes.

9 Q. Yes.

10 A. But the way, if I recall correctly,
11 we worded the agreement such that anything that we
12 created subsequently is also covered by this
13 agreement.

14 Q. Okay. And one of the three
15 agreements is with Societe, the company we were
16 talking about before?

17 A. The company, yes.

18 Q. It does describe your mother Roma as
19 proprietor. What kind of legal entity is Societe
20 Maison de Cuir, if you know?

21 A. It is -- to the best of my
22 understanding, it is very similar to a d/b/a in the
23 United States. So my mother Roma is doing business
24 as Societe Maison de Cuir.

25 Q. Okay. So your mother or your mother

1 and your father basically own it and they don't have
2 a corporation or Societe --

3 A. No, it's not a limited liability --

4 Q. Okay.

5 A. -- company.

6 Q. Earlier -- and I'm only giving this
7 as background. Earlier, we talked about the
8 creative process that led to peacock feather number
9 one and you described how you met with your mother
10 and Soumitra Roy personally.

11 These contracts use specific language
12 to describe what people did for the legal documents.
13 To the best of your understanding, is the purpose of
14 these documents simply to get ownership of those
15 joint works that you created in one place?

16 A. So --

17 MR. GILMAN: Objection. Calls for a
18 legal conclusion.

19 Go ahead.

20 A. So to the best of my understanding,
21 when I am creating art, I was doing it in
22 collaboration with my coauthors and together we were
23 creating the specific designs for the purpose of use
24 exclusively by my company, and I obviously did not
25 want that artwork to end up or my ideas to end up

1 elsewhere. So the purpose of this agreement, again
2 to the best of my understanding, was, number one,
3 that this artwork will not be sold or distributed to
4 anybody else without my authorization. It's because
5 I want to own it. I want to control the
6 distribution of this art because it greatly impacts
7 the survival of our brand and our company that we
8 have created here in the United States.

9 Also, I am bringing the new ideas and
10 concepts and direction in terms of trend,
11 whatever -- I mean, in the world of fashion, you can
12 refer to it as trend of what I want to create as a
13 collection for each season. So again, I need to
14 protect that idea of mine that I'm bringing to the
15 table that I'm creating as a collection for our
16 company and also, of course, from a legal standpoint
17 for the purpose of being able to copyright that work
18 and protect ourselves.

19 At the end of the day if I -- you
20 know, these are the works based on which my entire
21 business operates. All the ideas, all the
22 collections that I've designed prior to that date,
23 during that time and since then from season to
24 season is stuff that I'm constantly exposing myself
25 to in terms of whether it's research, whether it's

1 something that catches my attention and coming up
2 with ideas and then going back and working with the
3 team to design those ideas and making them into a
4 reality.

5 So that idea, that is -- I mean, from
6 our company's point of view, that is our asset. I
7 mean, that's -- without being able to protect it,
8 you know, our business would not exist. So that's
9 how I perceived this agreement. So the copyright
10 registration is just one aspect of the entire thing.

11 Q. How many trips do you make back to
12 India to have collaborative sessions to design new
13 product say in a year?

14 A. In a year, I make anywhere from six
15 to seven trips to India. In total, I spent anywhere
16 from three to four months in India, where it could
17 be seven days, ten days, one month, like that. It's
18 broken up into several trips. So I spend a
19 tremendous amount of time going back and forth.

20 Q. I've heard from people in the retail
21 business, retail gift business that 90 percent of
22 the sales occur on like ten days out of the year.
23 So some businesses are highly seasonal. I'm just
24 wondering are there seasonal aspects of your
25 business where there is sometime when you're more

1 overlaps as well.

2 Q. I want to refer back to exhibit two
3 and this is just to clarify. I think I can infer
4 the answers, but it might be clearer if we get them
5 on the record.

6 In the middle of that first page, in
7 the section marked author, the first listed author
8 is The Basu Group, Inc. That's your company;
9 correct?

10 A. That is correct, yes.

11 Q. And the contribution is said to be a
12 work made for hire. It says: Work made for hire,
13 yes; correct?

14 A. Correct.

15 Q. And without getting into the details,
16 were you the employee of your company that did the
17 creative input?

18 A. Yes, I was.

19 Q. Did anyone else?

20 A. No.

21 Q. All right. The next author is your
22 mother's company, Societe Maison de Cuir?

23 A. Correct.

24 Q. And it also says: Work made for
25 hire, yes?

1 A. Correct.

2 Q. And it's a d/b/a, so she made the
3 contributions; correct?

4 A. That is also a correct assumption,
5 yes.

6 Q. Did anyone employed by your mother's
7 company make contributions?

8 A. No.

9 Q. And then the third listed author is
10 Soumitra re --

11 MR. GILMAN: Roy.

12 Q. Roy. Sorry. And there it says:
13 Work made for hire, no; correct?

14 A. Right. He wasn't an employee.

15 Q. Yeah, and I believe you testified --
16 and I just want to get it down here.

17 A. Right.

18 Q. He was an independent contractor?

19 A. Right, he is an independent
20 contractor.

21 Q. Does he get royalties for designs?

22 A. In our method of compensation, we
23 have different aspects built into it where he is
24 paid against the product that we produce. So he
25 gets commission based on the volume of all the works

1 that we're doing.

2 Q. I'm looking at my exhibits and I have
3 that color copy issue. That stupid printer was not
4 behaving when I printed these out. Let's go off the
5 record.

6 (Whereupon, a recess is taken.)

7 MR. BREZINA: Let's go back on the
8 record.

9 I'll ask the reporter to mark as
10 defendant's exhibit ten.

11 (Whereupon, document bearing Bates
12 stamp TBG 83, is received and marked as Basu Exhibit
13 10 for Identification.)

14 COURT REPORTER: Number ten.

15 MR. BREZINA: The last page of which
16 is TBG 883.

17 BY MR. BREZINA:

18 Q. And just for clarification, the first
19 page, which is mostly black, was the cover page from
20 a magazine or publication in which the second page
21 appeared; is that correct?

22 A. That is correct. That is correct.

23 Q. And the Bates number didn't come out
24 because it was printed in black.

25 MR. GILMAN: It did. I see 82 down

1 Was peacock floral influenced by
2 fashion and color trends?

3 A. I wouldn't say that the peacock
4 floral was influenced by color trends per se because
5 I cannot think of anything specifically in fashion
6 that had that color grouping. It was just an
7 artwork that we created, but prior to that, as I
8 said, during the creation of peacock feathers
9 itself, there are many things that inspired me,
10 including seeing earrings with peacock feathers, so
11 logically there was a fashion inspiration from some
12 angle.

13 Q. All right.

14 MR. BREZINA: I'll ask the court
15 reporter to mark exhibit 12.

16 (Whereupon, document bearing Bates
17 stamps TBG 135 through 141, is received and marked
18 as Basu Exhibit 12 for Identification.)

19 COURT REPORTER: Number 12.

20 BY MR. BREZINA:

21 Q. Can you identify exhibit 12?

22 A. It's a printout of one of our
23 catalogs.

24 Q. Can you tell when this catalog was
25 put out and there is some really small letters in

1 the right margin?

2 A. Yeah, it says: Reprint July 2009.
3 So we put it out in July and August of 2009. So
4 based on that date that's printed physically right
5 here, the July 2009 that we just talked about, so
6 this definitely is going to be then our fall and
7 holiday catalog for 2009.

8 Q. All right. So you had to give --

9 A. Yeah, but --

10 Q. -- enough lead time to get the things
11 in the store?

12 A. But the fact that it says reprint
13 potentially means that we were probably circulating
14 the same thing earlier as well.

15 Q. All right. Is there anyone --
16 actually, let me withdraw that question.

17 Was this all the bags you were
18 offering at that time?

19 A. I don't have a recollection. There
20 could have been more.

21 Q. All right. Your more recent catalogs
22 are a lot thicker; correct? A lot more pages?

23 A. Our most recent catalog is also
24 designed differently, therefore, it is thicker.

25 Q. All right. You have more products

1 now than you had in 2009?

2 A. Well, that is correct, but also not
3 all our products are in our catalog.

4 Q. Does exhibit 12 have any bag that has
5 a single peacock feather by itself without another
6 peacock feather?

7 A. Yes, on the last page. Bottom right.
8 The item number is 1078 COL. That's the item number
9 for that specific wallet and that has a single
10 feather.

11 Q. All right. And it's opposite of
12 butterfly and on the other side; correct?

13 A. That would be correct, yes.

14 Q. Let's refer back to exhibit two, the
15 picture at the bottom. Exhibit two has the barbs or
16 branches at the bottom with green and blue
17 coloration; correct?

18 A. Yes.

19 Q. Black lines and on top --

20 A. There are green lines, yeah.

21 Q. And the picture you identified in
22 page 141 has a reddish or pink at the bottom and
23 then a greenish blue, the ones above it; correct?

24 A. Yes, it's a different coloration.

25 Q. And the curve of the quill or stem is

1 different in exhibit two and in item number 1078;

2 correct?

3 A. Well, yeah, it's slightly different.

4 This is curving in one direction. That's curving in
5 the other.

6 Q. And the coloration of the eye is
7 different; correct?

8 A. Yes, it is different, and like I was
9 telling you earlier, for me it was more about the
10 drawing itself of the peacock feather that
11 represented our creation and giving us the liberty
12 to fill those gaps with any color we wanted to.

13 Q. All right.

14 MR. BREZINA: I have exhibit 13 and
15 it's thick and the staple on the last page is coming
16 apart, so I'm going to give the reporter exhibit 13,
17 TBG 173, and the last page is TBG 216, so when we're
18 handling those, let's be sure to keep all of those
19 together.

20 MR. GILMAN: Can we clip it? It's
21 probably in those drawings there.

22 MR. BREZINA: Let me have the
23 reporter mark this and I will rummage through the
24 drawers.

25 (Whereupon, document bearing Bates

1 stamps TBG 173 through 216, is received and marked
2 as Basu Exhibit 13 for Identification.)

3 COURT REPORTER: Number 13.

4 MR. GILMAN: Do you have a copy for
5 me or not?

6 MR. BREZINA: Oh, sorry. With the
7 same -- I misplaced it while looking for a clip, but
8 I'll --

9 MR. GILMAN: Thank you. Thank you.

10 BY MR. BREZINA:

11 Q. Is exhibit 13 a copy of a catalog of
12 yours from 2012?

13 A. Yes, it is.

14 Q. How often do you put out catalogs?

15 A. Twice a year.

16 Q. Who would get a catalog like -- or
17 who got a catalog like exhibit 13 in 2012?

18 A. While I can't tell you exactly who
19 got it, but I can generally tell you that almost all
20 of our resellers get a copy of this catalog whether
21 it's in print format or digital format. In many
22 instances the end consumer who purchases our bags or
23 collects our bags, they also reach out to us for
24 catalogs. People attending trade shows pick up our
25 catalogs whether they buy from us or not. So it's a

1 pretty vast group of individuals, those who qualify
2 as current customers, those who qualify as potential
3 customers, those who qualify as consumers, etc.

4 Q. So, for example, if you have a retail
5 customer, we talked about shoe stores, but you might
6 also have a brick and mortar boutique, that might be
7 one of your customers?

8 A. Potentially, yes, yes.

9 Q. And if they're on your list, they'll
10 get a catalog?

11 A. Yeah, I mean, what we do is sometimes
12 we'll send out catalogs when a customer actively
13 requests for the catalog. Sometimes our sales reps
14 would send one out, you know, when they're
15 soliciting their business.

16 In some instances where we have a
17 regular customer, we will send them a catalog with
18 their order just so that they knew what the new
19 collection is going to look like, etc.

20 Q. Do you differentiate between classes
21 of resellers who get -- who got a catalog such as
22 exhibit 13? For example, there are some things that
23 only went to a certain channel or other things to a
24 different channel?

25 A. No. So when it comes to this

1 Q. If you skip ahead, and I think on the
2 catalog it has page number -- catalog page number
3 24. It's the TBG 197. There is a photograph of a
4 model with a peacock handbag and in the top right
5 there is a box that has verbiage.

6 Do you see that?

7 A. Yes, I do.

8 Q. And the first sentence reads: With
9 its iridescent plumage and dazzling beauty, the
10 gorgeous peacock has been a muse for our designers
11 for years.

12 Do you see that?

13 A. Yes, I do.

14 Q. And then it continues: We combine
15 the shimmering feathers with glowing tangerine
16 lilies to add glamor to a classic art.

17 What is the classic art referred to
18 there?

19 A. Well, first of all, this is marketing
20 verbiage. The classic art in this instance is being
21 referred to as a peacock feather story that we
22 created with flowers. So the peacock feather being
23 a very key element of this specific artwork and over
24 the years we have seen that customers come to us for
25 our peacock feathers.

1 Q. What does has been a muse for our
2 designers mean?

3 A. I guess the marketing team was trying
4 to refer to our -- you know, our inspiration. You
5 know, again, it's marketing verbiage. So the
6 consumer who is looking at this image reading this
7 text it romanticizes the process of how we get
8 inspired by elements of nature.

9 Q. So that would be the peacock
10 inspiration in exhibit -- I think it was four that
11 we were talking about? Is that the muse for the
12 designers?

13 A. I've got to look. That's exhibit
14 four; right?

15 MR. GILMAN: Yes.

16 Q. Is that the inspiration, the muse for
17 your designers, exhibit four?

18 A. Well, as we have discussed earlier
19 today that I am one of those authors, so yeah, I
20 mean, those feathers have definitely been an
21 inspiration to me.

22 MR. BREZINA: Let's mark this as
23 exhibit 14.

24 Q. Before we get to that, let's go back
25 to 13. I do see follow-up on something else you

1 talked about.

2 Back in 13, if you go to page 205,
3 there is a model with a red blouse?

4 A. Yeah, I see that.

5 Q. And the bag to me has tan and a lot
6 of pastel colors in it. Is that an example of what
7 we described -- what you described earlier about the
8 customer would perceive the importance of some of
9 the design colors in the bag greater than others?

10 A. Again, it's very difficult for me to
11 speak to the perception of a consumer or of an
12 unknown person. A bag like that personally I could
13 place different colors against it and make it look
14 good.

15 Q. All right. But the bag isn't a red
16 bag to go with the red blouse?

17 A. Well, I mean, this is a bag that I
18 can -- I mean, there is a lot of red in this
19 definitely, but I can also see somebody wearing this
20 with a pair of jeans.

21 Q. Okay. Let's go to 14 now.

22 MR. GILMAN: David, could you just
23 reread into the record the last sentence on page 197
24 of exhibit 13 because you didn't really end it the
25 right way if I recall.

1 MR. BREZINA: Oh, all right. The
2 only sentence regarding which I meant to elicit
3 answers -- oh, wait. No. All right. I'll read the
4 whole thing for the record.

5 MR. GILMAN: Okay.

6 MR. BREZINA: It speaks for itself,
7 but with its iridescent plumage and dazzling beauty
8 the gorgeous peacock has been a muse for our
9 designers for years, period. We combined the
10 shimmering feathers with a glowing -- I'm sorry,
11 with glowing tangerine lilies to transform a classic
12 art into a glamorous accessory. I think I may have
13 missed the tangerine part.

14 MR. GILMAN: Thank you.

15 MR. BREZINA: Oh, I'm sorry, yeah.
16 It is written slightly different elsewhere. All
17 right.

18 BY MR. BREZINA:

19 Q. Let's go to 14.

20 (Whereupon, document entitled
21 Anuschka License Agreement, bearing Bates stamps TBG
22 509 through 520, is received and marked as Basu
23 Exhibit 14 for Identification.)

24 COURT REPORTER: Number 14.

25

1 MR. BREZINA: Let's identify exhibit
2 18.

3 MR. GILMAN: Do you think you have a
4 lot more?

5 MR. BREZINA: No.

6 MR. GILMAN: Because then after that,
7 I still have to do some cross.

8 MR. BREZINA: Well, let me wrap it up
9 and then you can check your notes and we'll decide.

10 MR. GILMAN: Okay.

11 MR. BREZINA: Oh, yeah. Well, let's
12 do exhibit 18 and then I think I'll conclude. I'll
13 ask the reporter to mark as exhibit 18 --

14 MR. GILMAN: Oh, 17 is the one I
15 didn't get a copy of.

16 THE WITNESS: Yes, 17 was the sales
17 report.

18 MR. GILMAN: Yeah, that's it.

19 MR. BREZINA: Exhibit 18 has document
20 number SA 0007 at the top and it's two pages.

21 (Whereupon, document depicting
22 photographs, is received and marked as Basu Exhibit
23 18 for Identification.)

24 BY MR. BREZINA:

25 Q. I'll just ask you if you've ever seen

1 any of the images in exhibit 18 before?

2 COURT REPORTER: Number 18.

3 A. I have seen on page two it says --
4 actually, it's stapled. I can't -- I can't read
5 this number.

6 Q. Yeah, it's the second page. We'll be
7 able to figure it out.

8 A. Yeah, the second page of the exhibit
9 on the second line, the second image.

10 Q. Okay.

11 A. I've seen that image before.

12 Q. And what is shown in that image?

13 A. It's a bag with a peacock sitting on
14 a branch.

15 Q. Any idea who sold that bag?

16 A. No. I have no idea. I haven't ever
17 explored the creator of that bag.

18 Q. Any idea when, just generally, you
19 saw that the first time, that image, the one you
20 just talked about?

21 A. It seems to me that I've seen it some
22 time back. I cannot pinpoint a date or time or a
23 year, but definitely before 2016.

24 Q. Could it have been 2012?

25 A. I can't answer that because I really

1 don't recollect unfortunately.

2 Q. Let me just run through my paper
3 notes and see if there is something I missed on my
4 computer.

5 MR. BREZINA: No further questions.

6 MR. GILMAN: Give me just two
7 minutes.

8 Can I just see you outside?

9 THE WITNESS: Sure.

10 (Whereupon, a recess is taken.)

11 MR. GILMAN: Let's go back on the
12 record.

13

14 EXAMINATION BY MR. GILMAN:

15 Q. Just to clarify some stuff, Soumitra
16 Roy, in addition to coloring the art, does he also
17 do something other than that?

18 A. Yes. So Soumitra Roy, he is involved
19 in the process of drawing and coloring, which means
20 when we are going through the process of creating
21 that artwork, he will draw it to our specification
22 and guidance as many times as we tell him to until
23 we get to the idea that we all agree on.

24 So he literally would draw the lines
25 and then I would schedule it and say, No, I want

1 this shorter or I want this bigger, and then he
2 would do a fresh one with a better representation of
3 my thoughts or ideas or that was sharing so that it
4 can be converted into a representative diagram that
5 we can then use as our element or artwork, etc.

6 Q. And as part of that process, does he
7 also make suggests that add to the creation?

8 A. He definitely adds suggestions too.
9 He will share things like, you know, if I do it like
10 this, it will be easier to, you know, repeat it on
11 bags.

12 Q. Okay.

13 A. So he does add that aspect of the
14 value.

15 Q. As to the definitions that were
16 discussed earlier, I just want to clarify for the
17 record, are you an expert on feather structure or
18 feather anatomy?

19 A. No, I'm not.

20 Q. So other than I think you had
21 mentioned on the record that you used the term eye,
22 but then other than that, those other terms, do you
23 ever use any of those other terms when you were
24 creating your feathers?

25 A. No. We didn't use any of the other

1 terms.

2 Q. Did you ever look up any of those
3 terms in the dictionary?

4 A. No, I did not.

5 Q. On exhibit four, are we positive that
6 this is the right colorization on exhibit four or is
7 it possible from multiple color copies that it's not
8 accurate any longer?

9 A. So just from our experience with
10 printing catalogs and printing images of our bags,
11 we know that color printers distort the color. So
12 every time we're printing something, we get
13 different colors and there is a high probability
14 when I'm getting images off the internet that the
15 color there isn't accurate either.

16 Q. Do you recall specifically that the
17 red that you discussed earlier with Mr. Brezina on
18 these feathers is really there and really red as
19 opposed to a different color?

20 A. So when I was looking at it, one of
21 the things I remember saying that it's like reddish
22 at the same time orangish in color, but I don't
23 recall that specifically when I was -- I mean, this
24 is something I last looked at in 2007.

25 Q. And when you were creating the work

1 with your mom and Mr. Roy, were there two feathers
2 you had in front of you?

3 A. Yes, we did.

4 Q. Okay.

5 MR. GILMAN: I would like to mark --
6 do we want to just do -- how do we want to do this?
7 Plaintiff's exhibit or defendant's? No, they
8 wouldn't be yours.

9 MR. BREZINA: Well, no, they would be
10 yours --

11 MR. GILMAN: Yeah.

12 MR. BREZINA: -- because you're
13 introducing them.

14 MR. GILMAN: We don't have any
15 recollection what my numbering -- why don't we start
16 at 50 because I have no recollection what I ended
17 at.

18 MR. BREZINA: That's fine. Yeah,
19 yeah.

20 MR. GILMAN: Absolutely none.

21 Can we mark this one as plaintiff's
22 50 and then this one as plaintiff's 51.

23 (Whereupon, feather, is received and
24 marked as Plaintiff's Exhibit 50 for
25 Identification.)

1 (Whereupon, feather, is received and
2 marked as Plaintiff's Exhibit 51 for
3 Identification.)

4 COURT REPORTER: 50 and 51.

5 MR. GILMAN: For the record, after
6 the deposition, plaintiff's counsel, Mike Gilman, is
7 going to maintain P50 and P51 in his possession.

8 Is that okay with defendant's
9 counsel?

10 MR. BREZINA: Yeah. I think just to
11 keep track, maybe we should share some photos
12 contemporaneously. I can take a shot on my phone.

13 MR. GILMAN: Oh, you want to do a
14 selfie with the two of these?

15 MR. BREZINA: No, no, no.

16 MR. GILMAN: Okay.

17 MR. BREZINA: And we believe they
18 also correspond to TBG 1623 --

19 MR. GILMAN: Right. I was just going
20 to put that in the record.

21 MR. BREZINA: -- and one different,
22 but I didn't have the second one.

23 MR. GILMAN: Right.

24 BY MR. GILMAN:

25 Q. P50 corresponds to plaintiff's --

1 defendant's exhibit six which was produced by
2 plaintiff as 1623, TBG 1623. And even here you can
3 see the coloration differences in the -- that's
4 besides the point. And I believe P51 was produced
5 by plaintiff as TBG 1624 in its production. It's
6 either 1624 or 1622. Just not sure which one. I'm
7 pretty sure it's four though.

8 Mr. Basu, were both of these feathers
9 the ones -- well, describe what these feathers are.

10 A. These are peacock feathers.

11 Q. And when did you use these, if at
12 all?

13 A. So, yeah, I mean, these were the
14 feathers that we used back in 2007 when we were
15 designing the peacock feather.

16 Q. Okay. So back in 2007, you didn't
17 have just one peacock feather. You had these two
18 plus those other images of exhibit four?

19 A. That would be accurate, yes.

20 Q. Okay. So I'll leave that there.

21 Have you ever used or has your
22 company ever used red in your peacock feather bags?

23 A. We have painted the red color against
24 the peacock feathers in some of our bags.

25 Q. At one point during the deposition

1 you were throwing out the term idea and I just want
2 to make sure and you're saying it was your ideas or
3 your assets I believe?

4 A. Yeah, what I was trying to say is
5 that, you know, when I'm designing, I get -- you
6 know, I have the idea, okay, I'm going to create
7 something with a peacock feather. Then I have to
8 create that, actually create that to represent the
9 way I want it to be painted or drawn on my bags. So
10 that takes shape into a physical form. So, for
11 example, let's say with this peacock feather, I
12 looked at the real peacock feathers. I looked at
13 images of peacock feathers and then we drew it
14 several times until we got it to a shape and form
15 that best represented the look that I wanted to
16 create with the peacock feather and then use that
17 look in the rest of my subsequent creations.

18 Q. And that look that you ended up
19 creating was from the picture of exhibit two?

20 A. That is correct.

21 Q. Were there any other channels of
22 sales that you use?

23 A. Yeah, apart from internet and brick
24 and mortar, we also use TV channels that is direct
25 to home shopping networks.

1 Q. -- of exhibit four or of the
2 original --

3 A. No, they were irrelevant at that
4 point.

5 Q. Okay.

6 MR. GILMAN: That's all I have.

7

8 EXAMINATION BY MR. BREZINA:

9 Q. Having read those definitions of
10 feathers and feather components, and looking at PX
11 50 and 51, the actual peacock feathers, it looks to
12 me like the barbs, barbules, barbicels and hamulli
13 are interlocked to show what people see as the eye.
14 A feather grows so that the eye is formed by all
15 these interlocking things, and if it was a bird that
16 flew, that interlocking would be important because
17 that's what helps it fly. They don't just flop
18 loose. With that observation in mind and if you
19 want to correct me with anything in the dictionary,
20 let me know, looking at the image in exhibit two,
21 that's the copyright, the last page, the coauthors
22 decided to draw the eye as a unit with space between
23 what we call the branches that go all the way around
24 above the eye and then you added those four lines in
25 the top for better graphics.

1 Is that an accurate summary?

2 A. It -- generally, that would kind of
3 summarize our thinking process, and the only thing I
4 would add to that is that we deliberately maintained
5 certain spacing. We deliberately maintained, you
6 know, the visibility of the black line to add more
7 definition to how the peacock feather looked and,
8 yes, all of the -- the way we represented the
9 feather in this diagram, we deliberately wanted it
10 to be represented in this fashion because like I was
11 also earlier mentioning, Soumitra's input was key
12 where he said that yes, this can be --

13 (Reporter clarification.)

14 A. Soumitra, he was one of the authors,
15 his input was key that, you know, this can be drawn
16 again, number one. Number two, it captured the look
17 and feel of the concept of a peacock feather, and it
18 was a good representation of what I had initially
19 brought to the table as just an idea of painting
20 peacock feathers. So from that, once it took the
21 shape and when we added these specific lines to kind
22 of create barriers around colors or give us guidance
23 of how to color it, etc., it became what we wanted
24 it to be as a peacock feather.

25 Q. All right. Now, if it were more

1 anatomically correct in comparison to 50 and 51, you
2 wouldn't have those separate branches from around
3 the eye. You'd actually have them projecting out of
4 the eye?

5 A. Anatomical correctness wasn't our
6 priority. We were -- we are creating artworks and
7 what artworks allow us to do it gives us some
8 artistic liberty to create anything we want and
9 represent it the way we want to. So this was how we
10 decided and chose to represent the feather.

11 Q. Which is to not have the barbules or
12 branches extending directly --

13 A. That would be correct.

14 Q. All right.

15 (Continued on next page to make room
16 for jurat.)

17

18

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November 21, 2016

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1 MR. BREZINA: No further questions.

2 MR. GILMAN: Nothing further.

3 MR. BREZINA: Off the record.

4 (Time noted: 2:16 p.m.)

5

6

BHASKAR BASU

7

8 Subscribed and sworn to before me

9 this _____ day of _____ 2016.

10

11

12 _____
Notary Public
My Commission Expires:

13

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BHASKAR BASU

November 21, 2016

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2) ss.:

3 COUNTY OF MIDDLESEX)

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 5 following reasons:

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1 STATE OF NEW JERSEY) Job No. 537935

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 5 following reasons:

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25 Signature: _____ Date: _____

1 C E R T I F I C A T E


2 STATE OF NEW JERSEY)
3) :ss.
4 COUNTY OF MIDDLESEX)

5 I, RICH GERMOSEN, a New Jersey
6 Certified Court Reporter, New Jersey Certified
7 Realtime Court Reporter, California Certified
8 Realtime Reporter, NCRA Certified Realtime Reporter
9 and NCRA Registered Merit Reporter, do hereby
10 certify:

11 That BHASKAR BASU, the witness whose
12 deposition is hereinbefore set forth, having been
13 duly sworn, and that such deposition is a true
14 record of the testimony of said witness.

15 I further certify that I am not related
16 to any of the parties to this action by blood or
17 marriage, and that I am in no way interested in the
18 outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this 5th day of December 2016.

21 
22 RICH GERMOSEN, CCR, CRCR, CRR, RMR, CCRR
23 LICENSE NO. 30XI00184700
24 LICENSE NO. 30XR00016800
25 California CRR No. 198

BHASKAR BASU

November 21, 2016

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